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The Docket

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# the Docket

Villanova University School of Law



*File*

Vol. XXVII, No. 1

THE VILLANOVA SCHOOL OF LAW

October, 1990

## First-Year Primer

So, you want to be a lawyer? You've made it this far, and now the fun begins. Before you go diving into the law, you've got to learn to swim. Unless you've had some previous exposure to law, you might find that it's best to begin with the doggy paddle. You'll probably discover that studying law is unlike any other work or study experience you may have had. Lest you become intimidated, remember that the study of law is only different than other studies. It's not necessarily more difficult, and it's certainly not impossible. It's just an adjustment. And, to hopefully facilitate that adjustment, here are a few tips that some of your upper class colleagues found helpful. Once you have the basics down, the rest comes easy.

### The Classes

In a word, the classes here at law school are different. In college, we could sit back and absorb (or not absorb, as we saw fit) the information that was flung at us. It was a pretty one-sided discussion. Here, the professors use what's called the Socratic Method. Technically, it's an interaction between professor and student. Realistically, for some the Socratic Method is the cruelest invention since the downfall of the guillotine. Being singled out of a crowd is bad enough, but the typical first year fear is that you're going to say something wrong or stupid. Don't worry. Your classmates know (or will soon know) what it's like to be put on the spot —

remember that you're all in the same boat.

While many professors choose their "victims" at randomly from seating chart or roster lists, some have patterns. You may have a professor that assigns an "expert" for the next class. Some professors follow alphabetical order. Still others have an unannounced but perceptible pattern that you may be able to figure out within a few weeks. Whatever the method the professor uses, be prepared for class (more on how to do this later). If you're not prepared, don't try to explain why. Just say that you're not prepared. But — don't be unprepared. Not only can it cause a lot of embarrassment in class, but if you get behind in your assignments, it's extremely difficult to catch up. This is in part due to the amount of material you are learning. It's also because each new topic is built upon the topics you've previously learned. There's no such thing as cramming for an exam and ace-ing it anyway. Again, it's not like college. We're not learning facts. We're learning to dissect, analyze, and conclude.

You shouldn't have a problem with the Socratic Method if you keep in mind that our professors (with very few exceptions) are also human beings. While each has his or her own style, a well-prepared and willing student generally cannot be embarrassed or harassed.

A word of warning. Often you'll prepare for class and feel altogether comfortable with the material.

With little work and some faith in yourself, you will understand.

### The Books

By now you probably know at least two things about your books: they're extraordinarily expensive and they weigh more than a Volkswagen. Since you had homework assignments for your first day of classes, you've found (assuming that you did your assignment) that the books aren't standard texts. They are, rather, compilations of edited appellate court case opinions (hence the term "casebook"). We study appellate opinions for several reasons, including the fact that most trial court opinions aren't published. The opinions are edited to include only that part of the opinion that deals specifically with the topic that you are studying. Unrelated discussion on other issues that may have also been before the court have been edited out to avoid confusion.

The casebooks may contain some text, which is especially helpful as an introduction to new topics. There are also notes following the main cases. Read them. They expand on the issues treated in the main cases, and it's not unusual for some professors to call on students to discuss note cases, or even to put a hypothetical situation that appeared in the notes on an exam.

### The Courts

Sometimes it can be confusing when you try to figure out the judicial system after not ever having to deal with it before. There are two judicial systems in our country. They are **parallel systems** — that means that neither system is superior to the other. The state system is first comprised of trial-level courts. The state appellate courts review the trial courts' decisions and may affirm, reverse, or modify the lower courts' decision. The state supreme courts review the appellate courts' review of the trial courts' decision. Simple, right? The federal system is similar: trial courts (called District Courts), appellate courts (called Circuit Courts), and the Supreme Court. While anyone can bring suit in the proper state court, there are limitations on the type of case that may be brought in federal court. You'll learn about these limitations in Civil Procedure.

### Studying THE LAW

You'll probably hear your professors' frustrated pleas to your class to stop trying to learn THE LAW. THE LAW is a lay person's concept of the absolute, right-or-wrong, yes-or-no, black-and-white solution to a problem. THE LAW may not exist. The real legal solution to any problem depends on many factors. The solution may change when a problem varies even so slightly. Lawyers don't learn THE LAW. Lawyers learn to analyze fact situations and apply the existing, if somewhat conflicting, case law to come to a conclusion that benefits the client. That's it. There are very few "bright line rules" or "black letter law" as THE LAW is often called.

### A Realistic Approach

When you begin to study, have

(Continued on page 8)



VLS gives barbecue to 1L's.

## New This Fall

The class of 1993 comes to Villanova Law School (VLS) at an opportune time. During the past summer, the school has undergone renovations to make VLS a more comfortable and enjoyable place for its students, faculty and staff. Although many may immediately disagree with this conclusion due to the present parking difficulties, Dean Frankino assures us the problem is only temporary. The good news is that the increased number of matriculating students reflects an increase in VLS's popularity.

The increase in the enrollment this year represents an upswing in the school's reputation. The increased student enrollment is not attributable to the much publicized increase in law school applications nationwide, but rather VLS's growing reputation. Dean Frankino says that the number of students applying to VLS has remained constant in the

past three years. However now, more students are choosing to study at VLS over other nationally known schools.

Since classes have begun there's been some grumbling about the parking situation; students are having trouble finding parking spaces. But in fact, Dean Frankino assures us that there are enough spaces to accommodate all the students and faculty. The temporary shortage presently is caused by construction vehicles and trailers taking up parking spaces. Adding to the parking problem is the use of the parking lot by local residents who have gotten accustomed to using the lot at their convenience over the summer. Interestingly, the total number of students this year is equal to the number of students last year.

Returning students as well as faculty and staff have been amazed at how well the new air

(Continued on page 5)

## Class of '93 Stats

*[The editors apologize for the following statistical brevity which was due largely to the Director of Admissions' inability to comply with a timely request for more thorough information. The admissions office is, of course, invited to complement the following.]*

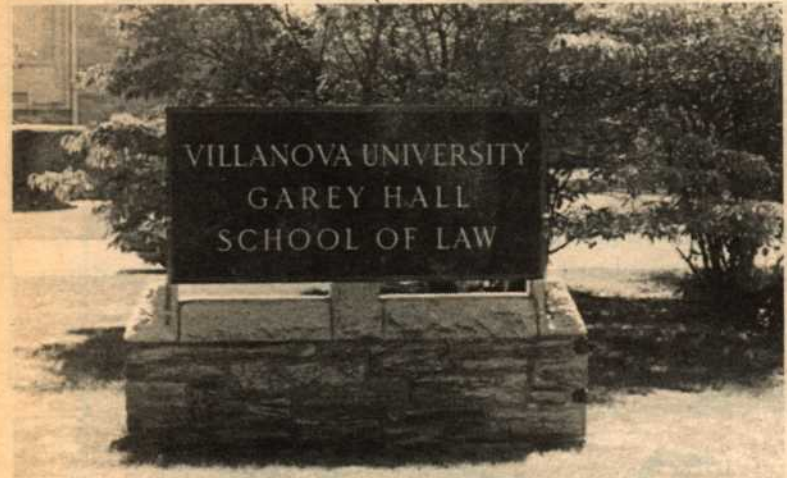
On Monday, August 27, the Villanova Law Class of 1993 appeared for their first day of classes. The class is composed of 252 students, fifty-one percent male and forty-nine percent female, a slight change from last year's entering class which entered with a fifty-two percent female, forty-eight percent male composition.

The students hail from twenty-three states and several foreign countries (compared with nineteen states in the Class of '92). As

usual, Pennsylvanians comprise the greatest number with one-hundred-nine students, followed by New Jersey with thirty-eight and New York with twenty-four. Minority students comprise seven percent of the class, which is a slight improvement over last year's class. The age range of this year's students is twenty to fifty plus.

Not surprisingly, Villanova University leads the alumni list with twenty-two of its grads in the Class of '93, followed by the University of Pennsylvania and Penn State, each with fourteen. The most popular undergraduate major of the class is political science, followed by English and economics.

The median LSAT is 39 and the average G.P.A. is 3.32.



The first warning sign.

## Inside This Issue . . .

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**Undue Process . . . . . p. 6**

**Just Do It! . . . . . p. 8**

the DOCKET  
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## Famous First Words

The world was rather busy last summer.

In New York, three teen-aged boys in the so-called "Jogger Case" will receive, at most, five years for their incredibly brutal attack on a young woman whom they left for dead in Central Park. Al Sharpton and black protestors cried unfair. In Philadelphia, vengeful Hispanic boys beat, bludgeoned and shot a white policeman's innocent son; the reading of the jury's verdicts caused middle-aged mothers to swoon and cry "Unfair!" — all, of course, to no avail: their grown sons will spend the rest of their lives incarcerated. Hispanic picketers in front of city hall shouted epithets of racial injustice and special treatment for the dead son of a police officer. A young tourist is murdered in the subway when he tries to protect his mother from knife-wielding muggers. White people kill too. Are the nation's judicial systems racist?

Prior to the recent events in Kuwait, the president's main concern appeared to be the so-called "War on Drugs" In Washington, D.C., a "vindicated" Mayor Barry was caught grinning by reporters who spent months covering accusations of the drug-addicted mayor filmed freebasing cocaine with a girlfriend in a hotel room. His many supporters protested that the federal government spent millions of dollars to "get" Barry only because he is black. They have a good point: the money could have been spent on countless other causes in a city overwhelmed by drugs and violent crime.

In the Middle East, American troops sit in a desert, awaiting a signal from their leader. It seems senseless to so many around the world: the megalomaniacal Iraqi leader, his foreign "guests," held helpless without release, and the pervasive threat of chemical warfare in a strange place, so far from home. And at home, the budget strains against its military weight. And for what? Oil?

It is much as I predicted last spring: We complain about our lot and are certain these days, our days, are worse than any preceding ones. After all, nothing is as threatening as the nuclear bomb, senseless, brutal crimes, the ecological destruction of the earth, AIDS, apartheid, the drug war and the increasing tendency toward impersonalization. We don't talk to our neighbors anymore; instead we put up fences and lock doors. Kingsley Amis, writing of the beatniks of the 1950's, described their despondency caused by the new impersonal world. That was more than thirty years ago. And preceding: Hemmingway's "Lost Generation" and the literary flight of Europe, F. Scott Fitzgerald in the 1920's, the Depression, Prohibition. And continuing: the right to vote, slavery, Huck Finn, Tom Sawyer, the Revolution, the Star Spangled Banner, John Milton in the 1600's outraged by censorship, and on and on. (This is beginning to sound like Billy Joel: apologies.)

Let's face it: everyone has a gripe, but this is not meant as an expression of total cynicism because, despite all the cruelty, inequity and disease, there exist occasional moments to celebrate, moments of pure stillness, and an occasional miracle or two. Don't despair, but don't turn away either. Despite historical similarities, these are nevertheless uniquely *our* days. And as I wrote last spring, "(g)uaranteed, the future, as once the past, shall indeed bear these same truths: our children, too, will complain and rejoice about their lot."

Now back to school: Let's get on with it!

S.B.B.



Editor gabs with 1L at T.G.

## EDITORIAL

### Elitism or Sexism at Wolf-Block: Valid?

Those of us who found our chance for advancement tied to the relative status of Villanova Law School watched with fascination this summer as Wolf, Block, Schorr and Solis-Cohen defended itself against the lawsuit filed by Nancy O'Mara Ezold, Class of '80. Ms. Ezold alleged that she was denied partnership at Wolf, Block because of her sex. Wolf, Block's response is that Ms. Ezold was passed over because she did not meet the "Wolf, Block" standard, that is, she had not attended an "Ivy League law school, graduated in the top of her class, worked on the prestigious law review or held a judicial clerkship."

According to Wolf, Block's counsel, Ms. Ezold, who graduated 61st of 200 at Villanova, was told when she was hired away from a smaller firm in 1983, that her "academic credentials and legal experience were far below the lawyers typically hired for Wolf, Block." Block's counsel explained further that Ms. Ezold was hired only because she had litigation experience and the firm "needed litigents [sic]" which, it seems, they got.

Other than for the implication that Villanova Law students who have dispatched resumes and cover letters to Wolf, Block would have spent their time more profitably by memorizing the first letters or all of the hearsay exceptions, the Ezold case is notable for pointing up the fact that Villanova Law remains Brand X among law schools, a blush wine, if you will, that must compete for acclaim against Mouton-Rothschild and Margeaux.

Of course, steps can be taken to change this stage of affairs. The alumni could raise fifty million



Villanova Law: A Mickey Mouse School?

dollars for an endowment fund, the admissions office could reject any applicant with a G.P.A. less than 3.9 or a LSAT score below the 99th percentile, and the school could hire professors who have published, rather than perished; but all this might be awfully messy and perhaps unnecessary.

Who are those Ivy League schools that are so admired by Wolf, Block? Well, there's Harvard Law, Yale Law, Penn Law, Princeton Law... Wait a minute, there is no Princeton Law. Yet, each year Princeton University receives several applications from individuals who are convinced that an Ivy League University must possess an Ivy League law school. Why not create a Princeton Law School then? Why not rename this school "Princeton University School of Law at Villanova University"? A well-placed cough at the end of the phrase should be sufficient to obscure the connection at interview time and the school could include "not affiliated with Princeton University" in its promotional materials.

Would Wolf, Block be fooled? Consider that their firm does not

appear to recognize the difference between "litigant" and "litigator." More important, however, is that fact that firms such as Wolf, Block do not hire Harvard Law graduates because of their superiority to the mere mortals supplied by the likes of Villanova; rather, it has more to do with client recognition of the names of certain law schools. Just as "Diethyl methyl" or whatever miracle ingredient sounds more impressive than its non-scientific equivalent ("sawdust"), so does "Harvard Law" sound more, well, jurisprudential when you are trying to get a corporation to shell out \$500 an hour for the advice of a second year associate who reviewed the case file over a scotch and soda at 2:00 a.m. on the "red-eye" flight back from a merger deal on the west coast.

What the wine sellers buy may not be half so precious as what they sell, but that may be so only because they glue the right label to the bottle. Gary Grant was once Archibald Leach. Princeton University School of Law (Villanova campus), your destiny awaits!

Christopher Bullard '74

### Top 10 Complaints of 1L's

by Tom McPherson

10. No electives like Film Analysis on schedule.
9. Classroom microphone makes voice sound whiny.
8. Professors are laughing at us, not with us.
7. Other students don't look anything like people on "L.A. Law."
6. Dreaming completely in Latin.
5. Fuzzy reception during Oprah on television in lounge.
4. Cafeteria ladies nag about table manners just like mom.
3. Frustrated during moments of intimacy by visions of Supreme Court nominee David Souter.
2. Should've given Wilfred Beauty Academy another look.
- ... And the number one top ten complaint of first year Villanova law students is
1. Graduation is 1075 days away.

## the Docket

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**Faculty Advisor**  
Prof. John Cannon



## OP-ED

## Possibly Illegal Library Policy?

## To the Editor:

The law library has adopted a restrictive new policy, which, according to a letter to library users from Dean Frankino, excludes all those who do not pay an admission fee ranging from \$25 per day to \$2,000 per year (law alumni pay less; current academics pay nothing). This policy is unjust, possibly illegal in certain respects, and should be reversed. Villanova, like other universities, exists for the public good. To this end, it receives many public benefits, including without limitation a partial monopoly on degree-granting, property tax exemptions, income tax exemptions, tax expenditures in the way of charitable contributions, government supported student loan programs (including a direct subsidy for administering some programs), and free government publications. In return, it owes at least a moral duty to the general public to make available those facilities which are not generally otherwise available. A law library is such a facility.

The new policy is wrong on at least three grounds: first, VLS gets too much public support to exclude the public; second, even if public support does not require public access, exclusion can hurt people who need access; third, the last thing Villanova needs is to increase its reputation as a Main Line institution demanding \$2,000 a year just to cross the threshold.

There are two aspects to the public-funding issue, one legal, the other moral. In addition to all of the various tax expenditures, which benefit VLS indirectly (but substantially), there is a direct and pertinent subsidy. Both the United States and Pennsylvania provide free copies of government documents to law libraries, but not to many other entities. see 44 USCA § 1916; 1 Pa.CSA § 501; 24 P.S. § 4425.

I don't know about Pennsylvania, but the United States requires that "Depository libraries shall make Government publications available for the free use of the general public..." 44 USCA § 1911 (emphasis added). Even if Pennsylvania does not legally require free access, and even if an individual litigant might have no legal standing to challenge VLS's



policy with respect to the federal materials, there remains a moral obligation to provide free access to these materials, which are produced and distributed at taxpayer expense.

In 1978 Congress expanded the definition of depository libraries to include law schools. P.L. 95-261. Consider that two of the three Senators whose comments are included in the legislative history [Sen. report 95-670, reprinted in 1978 USCCAN 553] relied partially on public access as a reason for the law:

[O]ur law schools... would be enabled to greatly expand the collection of U.S. Government publications that they now make available to their students and to members of the legal profession in their area. — Warren G. Magnuson (emphasis added)

The law school library thus not only serves the faculty and students..., but also attorneys and judges in all of northern Idaho and portions of eastern Washington. — Frank Church (emphasis added)

It is public access to government publications which informs these free distribution programs, and the recipient libraries ought to be under a moral, and possibly a legal, obligation to preserve free access. How can Villanova continue to accept these government subsidies with one hand and exclude the public with the other?

Apart from the responsibilities that the receipt of public subsidies should imply, there are other dangers of adopting user-fees. Certainly if VLS is determined to exclude nonpayors, then groups like local bar associations have far less reason to make any contribu-

tion to the school. For if individual attorneys are now required to pay their own way, there is no reason why members of the bar associations should any longer provide a general subsidy. Is VLS prepared to take a consistent position, and inform such groups that their contributions ought to be reduced or eliminated, now that the library is on (or approaching) a pay-as-you-go mentality? Even if VLS is not prepared so to act, is it prepared for the likely reaction of the local bar, acting *sua sponte*?

Another danger of user-fees, perhaps the most important (despite my having put it in the middle), is that *pro se* litigants and others will be hurt by the exclusion. Access restriction is not a new idea; nineteen years ago, about a quarter of private law libraries in "impacted areas" [Villanova's category in the survey] did not permit the general public entrance. Whom We Shall Serve: Secondary Patrons of the University Law School Library, 66 L. Libr. J. at 163 (1973). But the lpatina of age does not make

such restrictions any less obnoxious. Abrams and Dunn present a cogent argument that if one has a right to proceed *pro se*, *Faretta v. California*, 422 US 806 (1975), and if prisoners are entitled to law libraries, *Bounds v. Smith*, 430 US 817 (1977), then "[t]o find that a nonincarcerated *pro se* defendant has a lesser right of access to legal reference materials than a person who has already suffered conviction and incarceration would be anomalous." The Law Library's Institutional Response to the *Pro Se* Patron: A Post-Faretta Review, 1 W. New Eng. L. Rev. at 60 (1978). Abrams and Dunn also note that the burden of serving *pro se* litigants, both criminal and civil, will fall on those libraries which come to be known for their assistance. *Id.* at 64. It is not right for VLS to shunt this burden to the Temple or Jenkins law libraries. If it were just for Villanova so to shirk its duty, then all other law libraries in the area could do the same. This would be an intolerable result.

Which brings me to the third objection: reputation. In his letter to law graduates explaining the new barrier, Dean Frankino adverts to "the law school's growing reputation." Yet what is Villanova's reputation? To some extent, as one attorney with whom I worked this summer put it, it is of law students willing to pay \$5,000 per year not to go to Temple. Adding a \$2,000 annual barrier to public access can only worsen VLS's reputation as an unnecessarily exclusive place.

Anyway, isn't cost a bit of a red

herring, or a straw man, (or a straw herring, depending on how you like to mix your metaphors) here? Under the new edict, even paying outsiders will not be served

the staff; the admission fee will purchase only the use of the books. How will this affect in any material way the tuition we pay? Will appreciably more staff time be devoted to students? I've never been unable to get assistance because the librarian was occupied with an outside patron. Or will staffing levels be cut to maintain the same level of service, thereby allowing tuition to fall? Will the library purchase fewer books? Not likely, since at least a few practitioners might buy access, and it would be an absurdity to do so if the library is not going to maintain its collection. And besides, how much extra is now being spent to post a guard (non-uniformed during the day, uniformed at night) at the library entrance every hour the library is open?

Finally, why not try some alternatives? Why not send a letter to every outside patron who used the library in the last year, explaining in detail how much it costs to run the library and how much of that is supported by each student's tuition? Based on those figures, and on the number of times the patron used the library, ask for a specific contribution. Send a similar letter to local bar associations, with the same sort of data (absent, of course, any personally identifiable information, 24 P.S. § 4428), asking for an increased contribution.

Solutions to financial problems ought to be found by creative thinking by the development staff, not by excluding the public from a body of knowledge available in very few other places. I do not expect to use the law school's facilities much after graduation, yet I would like to contribute something anyway. Does the school really want me (and other potential donors) to adopt the converse of its position, and conclude that we ought not to give much unless we are also making heavy use of the facilities? I hope not. The school should take a step back towards reason and reopen its doors to the public.

Richard Brown '91



# BOYS! GIRLS!

## You Too Can Be A

# Docket



## Writer!

All submissions  
(articles, photos, cartoons)  
Welcome!





## Environmental Law Journal Makes Debut

This past summer the first issue of the **Villanova Environmental Law Journal** was published, marking Villanova's intention to play an increasing role in the rapidly growing field of environmental law.

The **Journal's** publication is the culmination of many individuals' efforts. Two years ago, the determination of a group of interested students led to the publication of the **V.I.E.W. Proceedings**. These **Proceedings** served as the basis for faculty approval of a school-sanctioned environ-

mental law review. Accordingly, the **Journal** has been designed as a scholarly publication in which environmental issues of regional and national scope are reviewed.

The **Journal** is run by a board of student editors and a student staff chosen through the **Law Review** open writing competition held each summer. The primary goal of the **Journal** is to provide the legal community with an insightful and well-reasoned research tool.

Volume I, Issue 1, available in

the student services center, includes articles by Professor John Hyson and New Jersey Governor James Florio. In light of this strong beginning, the Editorial Board anticipates publication of Volume I, Issue 2 this fall, followed by Volume II, Issues 1 & 2 in the spring of 1991.

With the continued support of the students and faculty, the **Journal** is sure to remain a respected and useful publication within the legal community.

### the villanova environmental law journal



volume I issue 1

#### ARTICLES

A Comparative Analysis of the Federal and Pennsylvania Superfund Acts

John M. Hyson  
John P. Judge

Too-Strict Liability: Making Local Government Entities Pay for Waste Disposal Site Cleanup

Honorable James J. Florio  
Honorable Robert F. Andrews  
Robert A. Fario, Jr.  
William M. Tambussi

The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested

Franklin L. Kury

#### NOTE FROM THE FIELD

How to Handle a Complex Criminal Environmental Case

Stephen D. Brown  
Alison M. Benders

#### COMMENT

State Superfund Superliens: Who Do They Lean On?

#### CASENOTE

*Pennsylvania v. Union Gas Company*: A Private Cause of Action Against the States Under CERCLA, as Amended by SARA

State Synopsis

## B.L.S.A.

The Villanova Black Law Students' Association (BLSA) is dedicated to the promotion of academic excellence and professional development among black and all other minority law students. BLSA members have the opportunity to participate in activities on a wider scale through the regional and national chapters of the organization.

BLSA sponsors a number of programs and activities which are aimed at enhancing the intellectual and professional growth of its members. Among such efforts are: 1) an on-going relationship with minority alumni who are practicing in various areas of the legal profession; 2) a colleague/mentor program whereby third and second years members assist first year students in making a smooth

transition into the law school community; and 3) a variety of formal and informal gatherings which provide a forum for social and emotional support as well as an exchange of views on relevant issues of the day.

BLSA's goals for the upcoming year include a minority alumni/student mentor program, an informational newsletter, a variety of guest speakers and occasional fund-raising activities.

Doug Gaston, Chairperson  
Kimberly Pona, Vice-Chairperson  
Gracia Montilus, Treasurer  
Sonja C. Walker, Secretary  
Cateria McCabe, Third Year Representative  
Eric Aycox, Second Year Representative

### NEWSPAPERS OPEN THE DOOR



Can you find the empty parking space in this photo?

## Moot Court Appellate Advocacy Forum

by Ed Campbell

On Wednesday, September 5, 1990, the Villanova Moot Court Board officially began its year long schedule by hosting its annual Forum On Appellate Advocacy. The Board annually invites two prominent members of the local bar or bench to deliver talks on the subject of appellate advocacy. The Honorable Phyllis W. Beck and James D. Crawford, Esquire were this year's speakers.

The Honorable Phyllis W. Beck was appointed to the Pennsylvania Superior Court by Governor Thornburgh in 1981 and was subsequently elected to a ten year term in 1983. In 1987, Judge Beck was appointed by Governor Casey to head a special Commission on Judicial Reform. Prior to her judicial appointment, Judge Beck taught and served as the Vice-Dean of the University of Pennsylvania Law School.

Mr. Crawford is currently a partner in the Philadelphia law firm of Schnader, Harrison, Segal & Lewis. At Schnader Harrison, Mr. Crawford is primarily responsible for that firm's appellate practice. Previously, Mr. Crawford was General Counsel for the Redevelopment Authority of the City of Philadelphia, and was the Chief Deputy District Attorney for the Appeals Division for the City of Philadelphia. Mr. Crawford attended Haverford College as an undergraduate and received his law degree from the University of Pennsylvania Law School. He was the Editor-in-Chief of the Law Review at the University of Pennsylvania.

Their remarks covered a wide spectrum of issues facing appellate advocates today. Judge Beck encouraged students to develop their own individual styles. However, she noted that peculiar or eccentric mannerisms may be self defeating. "The reality is, that many of the members of the bench are conservative and middle class. An advocate's effectiveness may be enhanced when their appearance mirrors the attitudes or positions of their audience." Judge Beck then recalled a particular male attorney who wore a pony tail below his belt, tucking it in his jacket whenever he appeared in court.

In his remarks, Mr. Crawford emphasized the need for exhaustive preparation. "Advocates must

know the record of a case cold. By the time you arrive at oral argument, you should know the record better than anyone else ... " Crawford said. Crawford voiced dissatisfaction with one current practice of the Pennsylvania Superior Court. The Superior Court does not reveal who will be sitting on a particular bench until the morning of an oral argument. "If we know who is going to be hearing a case, attorneys will be able to tailor arguments to address issues which have concerned particular judges in the past. I believe that the quality of appellate arguments would be improved if the Superior Court followed the practice of the Third Circuit Court of Appeals and announced beforehand the names of judges who will be hearing a particular case," Crawford said.

Judge Beck and Mr. Crawford delivered their remarks to an audience of over one-hundred students and members of the law school faculty.

In addition to the annual Forum on Appellate Advocacy, the Moot Court Board is currently sponsoring a number of other activities. The Thirty-First Annual Reimel Moot Court Competition began on August 31, 1990, with the distribution of this year's problem, which was drafted by Professor John Cannon. The first round of arguments is scheduled to begin on September 24, 1990. The first two rounds of the competition will conclude on October 15, 1990. Of the 78 teams involved in this year's Reimel Competition, sixteen teams will advance to the third round scheduled to begin in mid-November. This year's winning team will represent VLS at the 1991-1992 National Moot Court Competition.

The Moot Court Board Members will be competing in several outside competitions this year. Last year's Reimel champions, Linda Ferrara and Rosemary Halligan, will be competing in the 1990-1991 National Moot Court Competition. Additionally, Jane North, Karen Tomlinson and Robert Carmignani will represent VLS at the Benton Privacy Competition hosted by the John Marshall University School of Law in Chicago, Illinois. Other board members will be competing in various competitions throughout the year.

*The little things you do today can have an important effect on the earth's environment . . . Don't throw your Docket away, recycle it!*



# Executive Visitation Program Invites Centex CEO



Dean Garbarino looks on.

## Pub. Int. Law

The Public Interest Law Society, which is a young, growing organization invites all students to become members. The group has expressed the following agenda for 1990-1991: 1) Institute a loan forgiveness program; 2) make every student aware of his/her *pro bono* ethical responsibilities under the ABA; 3) create opportunities through the use of speakers, symposia and career services to learn about public interest law career opportunities, and 4) hold at least one symposium on a major public interest issue.



Jesters Barbara Mullin and David Rosenblum.

by Lisa Massey

Laurence E. Hirsch, Esq. is scheduled to dine with twenty-five Villanova Law students on October 18, 1990. Mr. Hirsch is the president and chief operating officer of Centex Corporation, based in Dallas, Texas. Mr. Hirsch graduated cum laude from Villanova Law School in 1971 after receiving his undergraduate degree in economics from the University of Pennsylvania in 1968. Mr. Hirsch, born in New York, New York in 1945, was named as one of "Corporate America's Most Powerful People" in the May 28, 1990 issue of *Forbes* Magazine. He has been with Centex Corporation for five years and has served as CEO for two years. According to *Forbes*, Centex's profits were \$9.5 million as recorded in the *Forbes* 500 Annual Directory issue, April 30, 1990.

Out of those students who express interest, twenty-five are chosen to dine with the Executive Visitation Program guest. Third years are (of course) given preference. The event begins at 6:30 p.m. and is scheduled to conclude at 8:30 p.m. The students and guest are served dinner, and in this candlelight dinner setting, the students are given informational observations by the guest about his background. The students will hear about the people

and events which shaped the guest's career, about how their legal services are supplied and what they expect from counsel. This sets the stage for an interesting open discussion with questions from the students.

In the past, says Dean Garbarino, the founder of the Executive Visitation Program, each session has been greatly oversubscribed. It has been a program that is "enthusiastically and warmly received by the students. They come away with insights they never perceived during college and law school." Of course, the food is very good. Normally, the guests elect to stay beyond 8:30 because, in the past, the guests have found that they are genuinely enjoying themselves.

In 1981, Dean Garbarino's class made a contribution to the law school for the benefit of its current students. In 1982, Dean Garbarino set up the Executive Visitation Program. The aim of the program is to introduce the students to individuals who have become highly successful through working in the business side of law. In addition to the contribution by Dean Garbarino's class, Francis R. O'Hara, class of 1957, contributes to the funding of the program. This program is very important for law students because it

exposes them, many for the first time, to a close, face-to-face and relatively informal meeting with a well-known and powerful business personality.

Through this program, Dean Garbarino states, students might become more familiar with the potentially intimidating circumstance of meeting such a powerful person; with the help of this program students will, hopefully, feel more comfortable communicating with such people in future practice.

The Executive Visitation Program has invited eleven businessmen to Villanova Law School in the past. In 1982, guests to the program were Arthur M. Goldberg, class of 1966, president and CEO of Triangle Industries, Incorporated; the Honorable Robert Bloom, secretary of revenue for the Commonwealth of Pennsylvania and Roy Peraino, chairman and CEO of Continental Bank in Philadelphia, Pennsylvania. In 1983, Thomas G. LaBrecque, president of Chase Manhattan Bank and John A. Murphy, president of Phillip Morris, Inc. visited the school. Fletcher L. Byrum, retired chairman of the Board of Koppers, Inc., and James L. Murdy, chief financial officer of Gulf Oil Corporation, visited in 1984. In 1986, John L. Quindlen, chief financial officer of E.I. DuPont DeNemours

and Company accepted an invitation to the Executive Visitation Program. In 1981, the mayor of Miami, the Honorable Xavier L. Suarez, was the executive guest. And, in 1988, Edmund L. Zalinski, former president and CEO of Life Insurance Company of America and Thomas F. Donovan, chairman and CEO of Mellon Bank East were visitors to the law school.

Generally, Dean Garbarino says, he aims at having two guests every year. Dean Garbarino stated that he plans to invite a female guest for the Executive Visitation Program and that the fact that no women have been guests as of yet is not from lack of trying. Both of the women executives invited by Dean Garbarino had to cancel after accepting the invitation. Elizabeth Dole had to cancel due to lack of time when her husband, Robert, announced himself as a presidential candidate in the 1988 election.

Ms. Betty Sue Peabody, President of Mellon Bank East, was scheduled to visit in 1988, but had to cancel due to a death in her family.

If anyone is interested in being a participant in this important program, please go to the receptionist's office, room 106.

## Surely You Jester!

The Court Jesters is a group devoted to the notion that there is more to law school than briefs, bluebooking, and outlining. Of course, there is a place for all of those, but we are committed to an escape from the daily monotony of the classroom. Now in our fourth year, the Jesters have successfully pulled together two performances a year, a drama in the fall and a musical in the spring. We rehearse one night a week (so you have plenty of time for studying and your viewing of "L.A. Law" and "Equal Justice") and generally have a great time. Our group is comprised of villanova law students, faculty, and even an occasional Dean!!

Our past productions have included the murder mystery "Rope," the slapstick comedy "Black Comedy," and three Gilbert and Sullivan operettas — "Trial By Jury," "Iolanthe," and "The Pirates of Penzance." Tentatively, we have scheduled a fall

production of Woody Allen's "Don't Drink the Water," and a spring performance of Gilbert and Sullivan's ghostly operetta, "Ruddigore."

So, how do I join? I'm glad you asked. We would love to hear from all aspiring actors, singers, dancers, musicians, technicians, set designers, choreographers, costume designers, makeup specialists, producers, directors, stage managers, and anyone else who has heard the roar of the crowd and smelled the greasepaint!!! Just drop a note in our mailbox, put a note on our bulletin board, or look for announcements from those wacky Jesters.

We will be holding auditions soon for both the fall and the spring productions. (No, you don't have to be a member of Equity — in fact, enthusiasm is far more important than talent!) Look for our announcements and come talk to us at the Activities Fair. Just remember, all the world's a stage...

## New This Fall

(Continued from page 1)

conditioning is working. But even more impressive is the fact that an entirely new heating and air conditioning system as well as new energy saving reflective windows were installed in the building over the summer. Moreover, additional internal offices were created for the legal writing instructors and a larger student services office as well as the movement of the Registrar's office closer to the students.

As for the courtyard, the construction currently underway was completely unanticipated by the administration. Dean Frankino explained, "we wanted to leave the trees and bushes in place in the courtyard." Originally, construction workers planned to replace the sewers and drains thought to be located directly under the center of the courtyard. The workers discovered that problems existed under the courtyard to such an extent that the entire area had to be dug up and new drainage pipes had to be laid. Dean Frankino quickly raised money from alumni donations to redo the courtyard and he chose a landscape architect for the job. The new courtyard will be filled with about 20 benches, the ground will consist of different types of tile and brick, trees will be planted in the spring, and a seating arrangement suitable for an outdoor classroom will be constructed. The courtyard should be complete in a few weeks. The administration is extremely pleased with all the renovations.

Another change at VLS is the new library policy. The school will implement a fee access program for use of the law library. This new policy was prompted by a study conducted by a library-task force appointed by the administration. The rapid growth of the legal profession in the King of Prussia, Conshohocken and the Main Line area has increased the numbers of lawyers who work within the

vicinity of the school. With this growth the number of lawyers who use the library has also increased. Practicing attorneys are competing with students for the decreasing work spaces and are demanding greater and greater services from the school's professional staff. The study revealed that increased lawyer use has become a serious resource problem. The library-task force found that over 600 practicing attorneys a month use the library's services such as the fax machines, reference librarians, and occupy almost one-third of the librarians' time. In the past, lawyers and business users have had access to the library and use of services without cost while the student users paid in excess of \$3,000 per year to support the building, collection and services. The new policy attempts to balance the interests of all law library users while giving priority to students, staff and faculty (academic users) as well as alumni who support VLS.

The new policy consists of the following guidelines:

1. Staff services will be restricted to academic users.
2. Access to the library and its collection will be on a user fee basis.
3. Alumni during the first three years from graduation will be able to use the library without fee.
4. Alumni who are four to ten years from graduation will have access to the library on a reduced fee basis.
5. Alumni who are ten or more years from graduation will have access on a fee basis.
6. Nonalumni and nonacademic users will be able to obtain access to the library and use of its collection on a fee basis related to the amount law students pay to support the library and its collection.
7. Any contribution to the law school will be credited to the contributor's library fee.

## VLS Women's Law Caucus

The Women's Law Caucus at Villanova is an organization whose programs and concerns are focused on legal issues relating to women. The Women's Law Caucus welcomes all law students, male and female to participate in activities. Ten percent of our organization consists of male members, and many of the groups programs are relevant to legal issues affecting both women and men.

The Women's Law Caucus is an active organization on campus, as well as within the community. Last year the Caucus sponsored a trip to the Supreme Court, hosted a variety of speakers, including Janet Perry from the Center on Professionalism at the University of Pennsylvania Law School; held a roundtable discussion on sexual discrimination in the workplace; and, selected three members to attend the National

Conference on Women in the Law in Detroit. The Alumnae Career dinner was the highlight of last Spring's activities and featured noted speakers such as Judge Kathryn Streeter Lewis, the First Assistant Public Defender in the City of Philadelphia, Ellen Greenlee, Professor Doris Del Tosto Brogan, and the Chief Assistant District Attorney for the Homicide Unit for the City of Philadelphia Barbara Christie.

One of the most interesting projects in which the Women's Law Caucus has been involved and continues to be involved is the Roundhouse Advocacy Project, sponsored in conjunction with Women Against Abuse. Many volunteers assist battered men and women in obtaining temporary restraining orders at the Roundhouse, police headquarters, in Philadelphia. Mary Scherf, a representative from Women

Against Abuse Legal Center, spoke on Monday, September 17, at 3:30 p.m. in room 101 about volunteer opportunities with the Roundhouse Project.

Other activities this year, promise to be as exciting, including a scheduled trip on October 9 to the Supreme Court. Sign-up lists will be available shortly. All first year students were invited to attend a wine and cheese reception with professors, on September 19 at 3:30 p.m., sponsored by the Women's Law Caucus. Membership forms for the Women's Law Caucus are available on the WLC bulletin board, or in the WLC office. Please feel free to drop by or contact one of the WLC officers, Jennie Lee Aitkenhead, Toi Dominguez, co-chairs, Bonnie Bay, secretary, or Anne DeMarco, treasurer with any questions, comments, or suggestions.



# Undue Process: Emily Post Facto

by B.S. Finkel

[Note: The author claims to have graduated last May. So how come we never see any photos of him at graduation in cap and gown, huh?]

[Author's note: Really, I did graduate. Those totally unfounded rumors you may have heard regarding my handing in a blue book for my Decedents final filled only with Grateful Dead song lyrics scrawled over and over in crayon were way offbase, and even if there were a shred of truth to it, it was graciously overlooked by a forgiving administration in dire need of funds to complete the new courtyard. There was also some suggestion of funding to enlarge the library. But that aside, it seems that, after three years of writing everything but meaningful news for the Docket, it's become like an addiction. I figure I can kick the habit gradually, starting out by writing entire columns, eventually scaling down my articles, say by leaving out punctuation, then adjectives, and finally, handing in contributions consisting only of a by-line. Or maybe I just had one article left over from last year. At any rate, I trust you'll continue to bear with me until I'm cured — as you have had to for the last three years.]

Many so-called experts will try to tell you Etiquette is something you're born with. Idiots, I say. They're thinking of the umbilical cord. Bizarre how anyone can get those two things mixed up. Others (so-called others, I should add) insist that good Etiquette is the result of proper breeding. I think they've got it backwards. I've found that proper breeding can be the result of good Etiquette — nothing like a little politeness to help you hook up at a singles bar. I can see all you guys out there now, thinking "Tell me more about this Etiquette stuff — it sounds better than the 'Get Women by Hypnotism' course I took."

Well, Etiquette is about acting the right way and saying the right things, and knowing who to pay off when you don't. Etiquette can be taught, much like the Rule Against Perpetuities in Property law. Of course, it can also be taught so that people can understand it.

To learn about Etiquette, one need only turn to Emily Post. If she's not sitting next to you, however, you may need to go to the library and get out one of her books instead. After combing through volumes of Ms. Post's books on Etiquette (true, I might have gotten more out of them if I'd read them, but then the pages wouldn't have taken on that healthy shine and body), I realized there was not word one about Etiquette for law school students. And, probably as a direct result,

our law schools are your basic hog-troughs of rudeness and improper behavior. This only makes sense. In between the long study hours and the high-pressure classroom sessions, rudeness seems not only justified, but downright mandatory. But Etiquette is what sets Man apart from animals. Except in zoos, of course, where they can afford cages.

Proper Etiquette starts with the little things, like amoebas and parameciums and protozoa — no, too little! Enlarge! Enlarge! — the little things, like saying "please" and "thank you" and "have a nice day" without meaning a syllable of it. A rude person will never be mistaken for someone with Etiquette; a polite person will often be. So practice saying those phrases in front of a mirror for as long as you can, or until someone gets impatient and starts banging on the door, demanding to be let into the bathroom. If they didn't say please, just ignore them. It'll do them a world of good to learn some Etiquette of their own, while we're at it. When you finally let them in (after leaving them to hop around outside long enough that it looks like they have caused rain clouds to start forming), remember to try out your newly-learned Etiquette skills on them as they rush past you in a desperate dash for the facilities: "Have a nice day!" Their response will tell you they haven't reached anywhere near your stage of Etiquettational achievement.

Once you've mastered politeness, you can move on to correctness. This is the hard part; it involves doing the right thing at the right time. It is so easy to mess up by doing the wrong thing at the right time; for example, one time President Gerald Ford, who carried klutziness to new political heights, had convened a panel to discuss the fate of Richard Nixon. Ford, never having mastered the nuances of Etiquette (for further detail, see **Accidents Will Happen: The Story of the Ford Presidency**), slipped on a banana peel as he leaned forward in his chair in the Oval Office while attempting to bang on the table for emphasis. As he fell forward, his brain failed to send the necessary signals to his fist to stop (or perhaps it sent the signal for "Have a nice day"); at any rate, as he slipped, his Secretary of State (whose name escapes me, but I'm pretty sure he had one) tried to catch Ford to break his fall. Ford planted a left cross right on the guy's kisser, a real zinger — that's it, the guy's name was Kissinger! — and out of politeness said "pardon." The rest is history, as Dick Nixon walks among us even today. You can also screw up by doing the right thing at the

wrong time, witness all those uninformed first-years faithfully attending their 8:30 classes. As you can see, it's quite important to do the right thing at the right time, or, alternately, to do the right thing after maybe an extra hour or so of sleep.

So I think it's high time someone with a sense of propriety, decency, and sensitivity took a shot at providing law students with some Rules on Etiquette. But until that person gets around to it, here are some of mine. **RULES OF ETIQUETTE, FOR THE TIME BEING**

- One must always first ask the professor's permission before videotaping a classroom lecture, particularly if one does so with the intention of sending it in to "America's Funniest Home Videos."



- When speaking with another as one walks up stairs, one\* must stand on the steps so that one is at the same eye level as the other person. Thus, if one is six inches taller than one's companion, one should stand one step below. If one is twelve inches taller, two steps below; eighteen inches, three steps, and so on. If there is more than a thirty-two inch height difference, avoid the stairs entirely and talk on the elevator.

("In Rules of Etiquette, never say 'you.' One says one. If there is more than one, then it is permissible for one to use the plural term 'youse.'")

- When addressing a distinguished member of the faculty or administration, be sure to address them properly. You wouldn't want them to be returned because you put the wrong address on them.

- Red wine with meat, white wine with fish, cherry coke with McNuggets.

- If there is someone using the Lexis or Westlaw terminal when you want to use it, politely inquire how long he will need to complete his research. If his answer implies that one would be well-advised to

get a change of clothing, one should wait patiently until that person finishes his research, unless one feels, after careful scrutinization and based on sober judgment, that the goober who refuses to give up the terminal will really fall for the old "Emergency Lexis Repairman" line.

- It is considered bad form to fail to bus one's table after one has finished eating. Table desecration is a big issue nowadays.

- If a lady wishes to cross a mud hole (read: the courtyard), a proper gentleman will offer his cloak for her to walk upon. Proper gentlemen, please note: remove the cloak first, before offering it.

- Eating or drinking in class while those around you are trying to concentrate on the lecture to learn the law is distracting to others and shows a decided lack of respect for both the teacher and one's colleagues. Wait until the professor calls on a student who is ot-nay oo-tay ight-bray to chow down.

- Say it, don't spray it.
- To utilize a library study room which another currently occupies, one should politely inform that person that he is regrettably not scheduled for use of that room for that time period, and politely request him to remove himself from the premises. If he gives you any lip, however, do not hesitate to call the bouncers to hurl that bozo out into the stacks.

- At a formal TG, the last one to drink off the keg before it's kicked must tell the next person who is haplessly trying to draw one more beer out of the dry tap that he got "nothing" but foam" before sneaking off into a dark corner to suck down the whole last brew himself without having to share.

- In class, if a colleague has given an incorrect answer to a professor's question, it is highly improper to comment to the person sitting next to you that you knew the answer, unless you're dead certain the professor won't overhear and call on you.

- Students are not allowed to walk in the library. What's that? They're not allowed to talk in the library? Hmmmm. I wonder if that little misunderstanding could have affected my grades?

Since rules, like the school's old air conditioning system, are made to be broken, there is no need to follow them religiously, unless you are the type who celebrates only those religious holidays for which they give you off from school. Its more important to form a practical understanding of good Etiquette and put it to use. Here's an example of the practical effect of having proper Etiquette. Note that the part of "Example" is played by Bob Denver, who immortalized the role of first mate

Gilligan, much to the delight of UHF station programming managers the world over. The Professor is, of course, played by Russell Johnson, equally famed for his stunningly moving and realistic portrayal of an Einstein-like scholar and educator (although how smart could he have been realistically, if he got on that boat with that crew?), whose career predictions of movie superstardom have since gone curiously unfulfilled despite his amazing acting ability. **USING THE MICROPHONE IN CLASS: FOR THE LOVE OF MIKE**

• **Improper Etiquette**

Professor: Answer the question, please use the mike.

Example: Okay.

Mike: Hey! Get off me!! What's the big idea?!

Example: Look, don't blame me. I was only following orders.

• **Bad Etiquette**

Professor: Answer the question, please use the mike, uh, the microphone.

Example: Is this on?

Professor: Answer the question, please.

Example: Testing, testing... one, two, three, testing.

Professor: Just answer —

Example (singing): I did it... my way.

Professor: Can someone help him out?

Mike: Gladly. (Helps him out of his seat and into the hall, face-first.)

• **Better Etiquette**

Professor: Answer the question, please use the mike.

Example (speaking directly into the mike): Me? Did you call on me?

Professor: Yes. Please answer the question.

Example (again, into the mike): Who are you talking to know? The guy behind me? Wearing the blue shirt? I think his name's Mike.

Professor: No, not Mike! You! Answer the question.

Example: You want me and Mike to answer the question?

Prof: No, just you! You, without Mike!!

Example (shrugging his shoulders): Okay, if that's the way you want it. (Puts down mike and answers inaudibly.)

• **Proper Etiquette**

Professor: Answer the question, please use the mike.

Example: (lip-synchs into the microphone).

Professor: Your microphone doesn't seem to be working. Okay, someone else answer.

See? It's easy, once one knows how. If everyone practiced proper Etiquette, law school would be a much more pleasant, enjoyable, civilized place. Or at least, there would be a lot more people who are able to lie about it like I can. Have a nice day!

## Become a Prison Volunteer

Thresholds needs **you** to become a volunteer at either Delaware County or Chester County Prison. Why? Because someone there needs **you**.

Studies show that inmates having a one-to-one contact with caring volunteers from the community are less likely to return to jail.

Thresholds volunteers are in prison to teach specific skills and to help those inmates who want to help themselves.

By setting goals and working to achieve them, inmates make decisions and solve problems. By

solving problems, they gain control over their lives, have a more

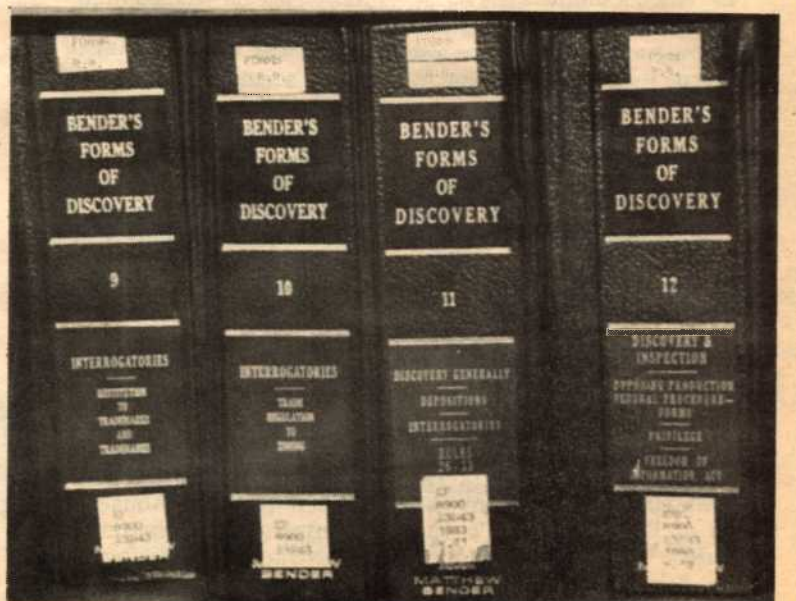


positive image of themselves, affirm their worth as individuals and are better able to cope with

life when they return to the community.

Volunteers are needed who can give at least two hours weekly for scheduled sessions. No special background or previous training is required. The only qualification is that you attend the next training session being held at Delaware County Community College beginning September 29-30.

If you would like more information about the Thresholds program at Delaware County, please call Jacqui McDonald, 459-9384, or for Chester County, call Edward LeNoir at 363-8038.



Docket editor writes series of law books over summer.



# Stream of Unconsciousness: To Rescue or Not to Rescue

by Suzanne Bender

"Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It places their effects within the range of the natural and probable. The wrong that imperils a life is a wrong to the imperilled victim; it is a wrong also to his rescuer." **J. Cardozo, Wanger v. International Ry. Co., 133 N.E. 437 (1921).**

This is an article about law and morals, about searching one's actions as opposed to his thoughts and his heart. *Example:* While walking by a lake, I espy a drowning man who sees me and cries for help. I'm a good swimmer. I could easily remove my shoes and swim out to the middle to save him. But I'm wearing a new dress: very expensive. Surely, I'd ruin it if I got it wet. Also, I don't want to be late for the most important party of the season. I'm more of a social climber than a swimmer. What to do? What if I do save him (the hell with the dress and the party) and, in my attempt to rescue, I accidentally push him under and he drowns? His plaintiff (maybe a wife or a parent) might sue me. My busy social calendar doesn't allow time to go to court.

Medieval courts tried one's act, rather than one's intent. More than six-hundred years ago, a man was brought before the King's Bench for a battery he committed. The plaintiff had been beaten but the defendant, it was found, did so purely to defend himself from a malicious attack started by the plaintiff. Nevertheless, the defendant was held to have committed battery and, as such, was sentenced to prison and had to make reparation to the plaintiff.

"The thought of man shall not be tried, for the devil himself knoweth not the thought of man." Y.B. 7 Ed. IV, f.2, pl. 2. Times have changed: It would be outrageous in my first example, for instance, to sentence a well-meaning passer-by (not the woman in the dress, but another) for earnestly attempting to rescue one in perilous danger. Or would it be . . .

[For the purposes of this article, Good Samaritan statutes, now in place in all fifty states, won't be discussed as they pertain to medical personnel, although it is noted with interest that while other state's statutes require that aid be rendered gratuitously, Vermont's statute imposes an affirmative duty to act if a rescue attempt can be made without unreasonably endangering the rescuer. Vt. Stat. Ann. tit. 12, sec. 519.]

I recently met someone who completed a CPR-Heimlich Maneuver course. He was instructed not to offer assistance to one who doesn't request it unless that person is unconscious.

So: You're in a restaurant and you see someone who appears to be choking. She obviously cannot breathe: her face is red, she's clutching her throat, and there is an excited flurry of helpless diners surrounding her. With your knowledge of the Heimlich Maneuver, you rush over to save her. First, ask her if she would like you to help her. If she shakes her head, get lost, because if you disregard her denial for help and perform the maneuver and save her life, she can sue you later, probably for battery. If she nods, however, then do it (but only if you're licensed!). If licensed, you would be immune from liability even if you, say, fracture a rib or rip her dress. If she indicates she doesn't want help and subsequently passes out, however, you can do whatever you want to her (but be reasonable because there's a crowd of people watching you). Now, if you happen to stumble upon an unconscious person who requires, say, CPR, and you're licensed to do it, do it. This raises obvious moral dilemmas: What if you're not actually licensed but happen to know CPR, perform it on an unconscious person, save his life, but crack a few ribs in the process? You might be sued. These surely are litigious times.

The above restaurant scenario is apt to illustrate the defendant's "assumption of the risk"; however, if the plaintiff (the choking woman) does not protest your offer to "save" her, then the risk is not necessarily assumed, especially here, where the rescuer (potential plaintiff) leaves the rescuer (potential defendant) no ethical choice. But that's not entirely true. There is always an alternative (except perhaps in Vermont): Look the other way—which brings up the next situation:

What happens when one doesn't attempt to rescue another in danger? In *Yania v. Bigan*, 155 A.2d 343 (Pa. 1959), decedent's plaintiff alleged, *inter alia*, that defendant Bigan, owner of a coal strip-mining operation, owed a duty to plaintiff to at least attempt to save the decedent when the decedent jumped (allegedly cajoled by Bigan) into a cut filled with eight to ten feet of water and subsequently drowned. Basing its decision on Restatement Torts, sec. 314 and its prior decision in *Brown v. French*, 104 Pa. 604, the court (quoting *Brown*) said, "If it appeared that the deceased, by his own carelessness, contributed in any degree to the accident which caused the loss of his life, the defendants ought not to have been held to answer for the consequences resulting from that accident." 104 Pa. at 607. The court determined that the law imposed no legal responsibility on the defend-

ant for putting the decedent in a perilous situation and, absent such responsibility, he owed the decedent no duty to attempt rescue. 155 A.2d at 346. The defendant was able to look the other way with impunity.

In *Farwell v. Keaton*, 240 N.W. 2d 217 (Mich. 1976), however, a young friend of the plaintiff's decedent was held liable for failure to bring the decedent to a hospital. Both young men were chased by a gang of six. Siegrist escaped injury, but the other, Farwell, was

eight percent treatable if the person is taken to a physician before or within half an hour after loss of consciousness.

The court determined that there is a duty to avoid affirmative acts which may worsen a situation. *Id.* at 220. "If the defendant does attempt to aid him, and takes charge and control of the situation, he is regarded as entering voluntarily into a relation which is attended with responsibility. Such a defendant will then be liable for a failure to use reasonable care for

duty to attain medical assistance, else, said the court, his failure to do so would be "shocking to humanitarian considerations" and fly in the face of "the commonly accepted code of social conduct." *Id.*, quoting *Hutchinson v. Dickie*, 162 F.2d 103, 106 (C.A. 6, 1947).

Had Siegrist and Farwell been strangers or casual acquaintances, one wonders how the court might have strained to impose the same legal duty to assist. It seems as if Siegrist didn't fully appreciate the gravity of his friend's injuries. Why else would he not drive him to a hospital? Does this mean that if A assumes his injured friend, B, doesn't require medical attention and then B dies, say, from internal injuries unknown to A, should A be found liable of failing to rush B to a doctor? And similarly, if competent adult A dares competent adult B to jump into the water, and if B does so but drowns while A simply watches, should A be held accountable for B's death?

It's difficult to imagine turning away from another human being in distress; yet, it happens. People witness violent crimes and don't call the police because they don't want to "get involved." Diners in restaurants ignore choking strangers. Others don't want to destroy their good clothes. Still others feel it "just hurts too much" to see *les misérables*. But where to draw the line? Should wealthy people give money to beggars in order to "rescue" them from famine and homelessness? Between strangers, if one can do so without endangering himself, is there a moral duty to help other human beings in distress?

*She obviously cannot breathe: her face is red, she's clutching her throat . . .*

severely beaten. Siegrist helped Farwell into Siegrist's car, applied ice to Farwell's wounds, then drove around for two hours, stopping at a few drive-in restaurants on the way. Farwell fell asleep in the back of the car, and when Siegrist was unable to awaken him, he drove him to Siegrist's grandparents' house, leaving him in the car in their driveway. The grandparents discovered him in the car the following morning and drove him to a hospital where he died three days later of epidural hematoma. At trial, plaintiff's expert, a neurosurgeon, testified that such a condition is eighty-five to eighty-

the protection of the plaintiff's interests." Prosser, Torts (4th ed.), sec. 56, pp. 343-344.

Although courts have generally been reluctant to impose duties to aid or rescue where no duty has been predicted on, say, a special relationship, the *Farwell* court held that since Siegrist and Farwell were friends who were on a "social venture" on that fateful evening, there was an implicit understanding between them (and, presumably, between all friends who share "social ventures") that one would assist the other should a perilous situation arise. Siegrist, therefore, had a

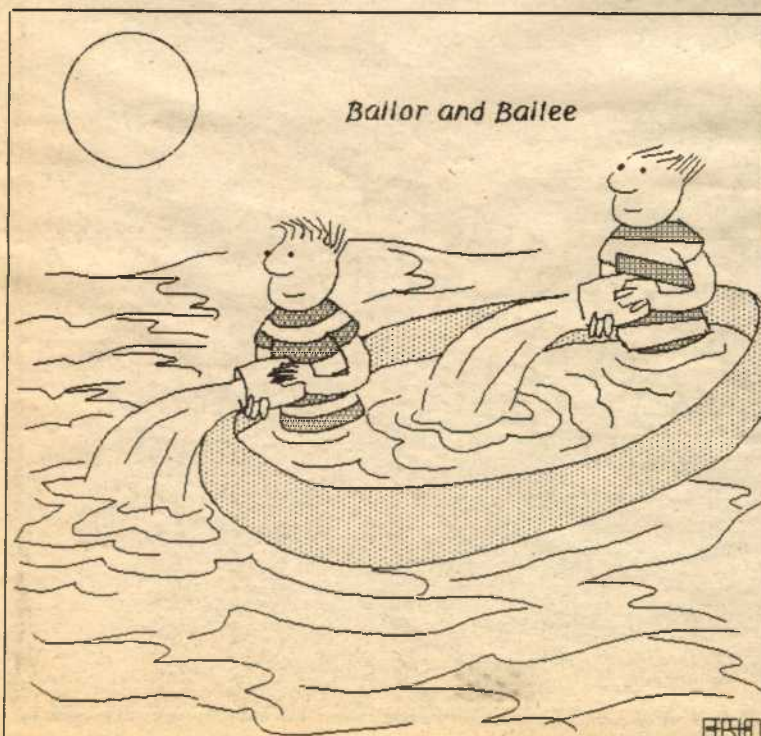
"Tort, Equal Rights Amendment, Judge Wapner.  
The People's Court! Roe vs. Wade??  
Depositions...arbitrations. Divorce Court!  
Private practice...Rusty the Bailiff commercial litigation.  
Griswold v. Connecticut attorney, counselor.  
Personal Injury. Alimony. L.A. Law."  
"Arriba arriba, ándole ándole. Dos Equis!  
Speedy Gonzalez...Acapulco...Tequila.  
Margaritas nachos! The 3 Amigos. Olé. Nachos  
and Cheech & Chong. Cancun. Ricky Ricardo salsa?  
Juan Valdez. Puerto Vallarta, fajitas.  
The Nina, The Pinta, The Santa Maria. Siesta or fiesta?  
Ricardo Montalban."  
"Someone v. The State of California. Paralegals,  
beneficiaries, and heirs. Brown v. Board of Education.  
The Bar!?! Mergers. Partnerships. Kramer vs. Kramer...  
Associates. Verbatim. To Kill a Mockingbird. Due  
process of law, Court Reporter Doug Llewelyn.  
The Paper Chase."

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# Just Do It!

by Chris Lewis

It is 2:30 p.m. on a weekday during your first year at Temple Law School. You have just had another confusing class and are becoming more distressed as you scan your "Things to do" list. So much to do ... read for classes, do research for legal writing assignment, outline, meet with study group, eat dinner, read over your class notes, check off items as they become done on your "Things to do" list, etc. What to do first?

Run. Not run as in "running away from it all," but run for the enjoyment and exercise of it. Run to give your brain a break from the rigors of law school. Run to keep yourself physically fit. But where to run? It would not be a very good idea to just step outside the law school and run around North Philly. As you contemplate driving home to get some exercise, you realize that you are a first year law student at Villanova, not Temple! Whoops, that first year haze must really be getting to you and you start to consider the importance of exercising, especially because you only now realized which law school you are attending.

As a Villanova law student, there are many areas where you

can run and engage in other athletic activities. The main athletic facility, consisting of DuPont Pavilion, Jake Nevin Hall, and the Butler Annex, offers an indoor pool, an indoor track, a weight room, and several basketball courts. Saint Mary's Hall,



conveniently located across Spring Mill Road from the law school, also houses a basketball court and a swimming pool. There are also several tennis courts and various types of playing fields located around campus.

You certainly will not feel out of place at these facilities. Law students can often be found playing pick-up games of basketball at St. Mary's after classes. Others, perhaps over-doing the exercise aspect of their lives, can be found there during classes. However, basketball fever does not truly heat up until spring semester. Then, the law school, co-ed Basketball Intramurals and the undergraduate men's and women's Basketball Intramurals take place.

There is no need to wait for "March Madness" to participate in group athletic activities. During the fall semester, the highly-respected rugby club will take on at least four opponents, including arch rivals Temple Law. Also, the Softball Intramurals will start in September. Other law school clubs include the lacrosse club, the biking club, and, of course, the running club.

So, you think, not only are there several facilities available for exercising, a lot of these activities can be done with others. Why not "just do it?" Sure, the work will still be there when you are done, but at least you'll have something checked off of your "Things to do" list.

## First-Year Primer

(Continued from page 1)

three things handy: a law dictionary, a pen and paper. If you see a word that you're not 100% sure you know what it means, **look it up**. Look it up even if you think that the word is familiar, or that you can glean the definition from the context. Very often you can't. This is because words that normal people use everyday mean something different in the law. In the law, words take on shades of meaning. Some words become terms of art, and thus take on very specific definitions.

You'll also be told to "brief" the cases you read for class. Case briefs are short synopses of the cases: you need to know who's suing whom for what and why. You'll also need to know the history and outcome of the case. Some professors prefer a certain type of case brief. Follow it for that class.

Read carefully — don't skim. Keep the parties' names straight. While the plaintiff's name usually comes first in the caption, some older cases flipped the names if the defendant is the party appealing the lower court decision, so that the defendant's name will appear first in the appellate decision caption.

Understand the issue. The issue is what the case is all about. What are the parties arguing about? Be fact-specific — an issue is not: "Did the defendant assault the plaintiff?" An issue is: "Did the defendant, when he shouted obscenities at the plaintiff and waved a knife in her face, assault the plaintiff?"

### Help

One of the most frightening things about beginning law school is the feeling that you are the only one who doesn't understand everything immediately. You're not. Generally, anyone who insists that he or she is having no problem understanding the material or the professors is either lying or more

lost than you are. Relax. There are a number of things you can do to overcome any confusion or frustration you might be feeling. The best is to ask your upperclass friends and colleagues for help. Don't be embarrassed: we all had questions, too. Most upperclass students are very willing to pass along a little advice, share the skills and techniques that enabled us to make it this far.

There are also several study guides available that may help in simplifying and explaining the topics you're studying. It may help to review these guides before or after doing your assignments. Don't, however, rely solely on the study guides. They are, for the most part, too simplistic and incomplete to offer you what you need to learn.

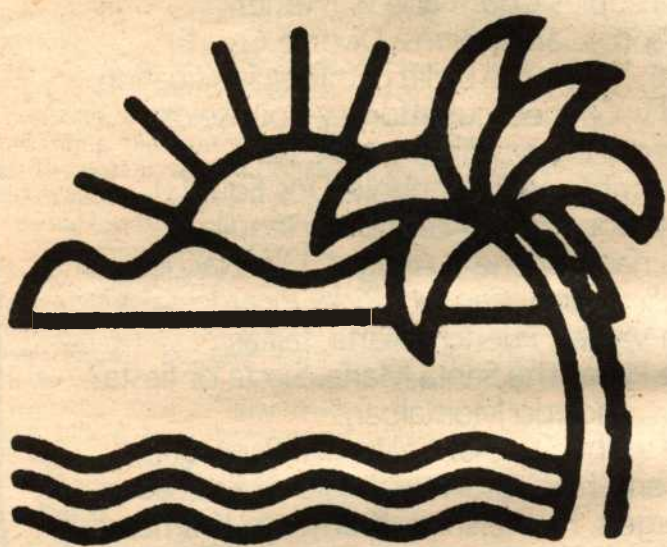
### The Good Stuff

All work and no play makes Jack a dull law student. It would probably make Jack an unhappy person as well. There are a lot of things to do around here besides studying. Join an activity or group here at school. Join **The Docket**, for example. Get involved in intramural sports, community activities, and social functions. Most students and professors don't recommend that first year students work, at least for the first semester. But that doesn't mean that you have to drop everything in your life just because you've begun studying law.

An overdose of studying can make you stressed-out, depressed and anti-social. It may also be counter-productive: if you overdo it throughout the semester, when exam time rolls around, you may be burned out.

Keep in mind that this is not a monastery. You are allowed to have fun. Sometimes students who live a more balanced life, one in which there's time for work, play and relaxation, do the best, and actually wind up enjoying law school.

## Submissions Deadline for October Issue: October 15



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